

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER
AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICHAEL AURASH ZADEH, M.D.,
Physician's and Surgeon's
Certificate No. A 99098,

Respondent.

Case No. 800-2015-015340

OAH No. 2017110541

DECISION AFTER NON-ADOPTION

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on November 5, 2018, in Los Angeles.

Nicholas B.C. Schultz, Deputy Attorney General, represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs (Department), State of California.

Peter R. Osinoff and Derek O'Reilly-Jones, Attorneys at Law, represented respondent Michael Aurash Zadeh, M.D., who was present.

The record closed on November 5, 2018.

Protective Order

The ALJ ordered redaction of certain exhibits to provide privacy protection.

Stipulation to Facts and Evidence

Complainant alleged two causes for discipline in the Accusation, for aiding and abetting the unlicensed practice of medicine and for unprofessional conduct based on the aiding and abetting. At the start of the hearing, the parties submitted a written stipulation that provided that respondent "admits to the first and second causes for discipline set forth in [the] Accusation Consequently, the parties stipulate and agree that [r]espondent's license is subject to discipline, while reserving the right to present evidence and argument concerning the appropriate disciplinary outcome in this matter." (Ex. 32.)¹ The parties stipulated to certain underlying facts and that certain exhibits were admissible in evidence.

¹ In view of this stipulation, neither party introduced expert witness testimony.

The Proposed Decision of the administrative law judge was submitted to Panel B of the Medical Board of California ("Board") on November 30, 2018. After due consideration thereof, the Board declined to adopt said Proposed Decision and thereafter on February 11, 2019, issued its Order of Non-Adoption. On April 8, 2019, it issued a Notice of Hearing for Oral Argument setting the date of May 9, 2019.

The Board has received, read, and considered the entire record, including the transcript and exhibits of the hearing, oral and written arguments, and now hereby adopts the following decision of the administrative law judge.

FACTUAL FINDINGS

Jurisdiction

1. Complainant filed the Accusation in her official capacity. Respondent timely filed a notice of defense.
2. The Board issued Physician and Surgeon's Certificate No. A 99098 to respondent on February 28, 2007. That certificate is scheduled to expire on May 31, 2020.

Respondent's Background

3. Respondent is in private practice as a general surgeon and has hospital privileges at Providence Tarzana Hospital and Valley Presbyterian Hospital. He is also the owner and medical director of Z Center for Cosmetic Health, a non-surgical cosmetic medicine practice. Respondent obtained his medical degree from St. George's University School of Medicine in St. George's, Grenada, in 2004. He completed an internship in general surgery and a surgical residency at Saint Barnabas Medical Center in New Jersey, where he was Chief Surgical Resident in 2008 to 2009. He is board-certified by the American Board of Surgery.

Respondent's Non-Surgical Cosmetic Medicine Practice

4. At Z Center, which at relevant times constituted about 40 percent of respondent's medical practice (his general surgical practice constitutes the remaining 60 percent), respondent offers CoolSculpting, laser hair removal, and prescription skin care products.
5. CoolSculpting is a non-surgical, fat-freezing procedure that utilizes a device that triggers apoptosis, or natural cell death, in fat cells. Over time, the human body naturally eliminates these dead cells. The CoolSculpting procedure involves placing applicator cups on fatty areas of the body, connecting them to the CoolSculpting machine, and turning it on for about an hour. At the end of the hour, the applicator cups are removed and the CoolSculpting technician massages the previously cupped area.
6. At Z Center in early 2017, respondent employed a licensed registered nurse, Amanda Farrar, a licensed esthetician, Rebecca Merzlak, a cosmetic treatment specialist, Siranush Mkrtchyan, and a client service coordinator, Lyndi Loomis.

7. Ms. Merzlak had worked for respondent for approximately two years and performed CoolSculpting procedures. Ms. Merzlak consulted with patients about the CoolSculpting procedures at no charge; patients could choose instead to have a consultation with respondent for \$200. Ms. Merzlak also consulted with patients seeking respondent's prescription strength version of Obagi, known as Brighten, and recommended Brighten to patients. Respondent trained her on how to use the skin care products and what to recommend to patients.

8. Ms. Farrar had worked at the Z Center since October 2016. She was the only licensed registered nurse working at the clinic. Respondent trained her to use the laser hair removal machine. Respondent generally did not consult the laser hair removal patients unless they specifically requested to see him. Nurse Farrar conducted medical histories and evaluations to determine if patients were good candidates for laser hair removal. Respondent trained her to conduct these evaluations and to determine whether laser hair removal was an appropriate treatment procedure for the patient.

9. Ms. Mkrtchyan had worked at the Z Center since February 2013. She was a cosmetic treatment specialist and performed CoolSculpting procedures. Ms. Mkrtchyan saw patients seeking CoolSculpting and performed evaluations to determine whether they were good candidates for the procedure. Ms. Mkrtchyan consulted with patients about the CoolSculpting procedures at no charge; patients could choose instead to have a consultation with respondent for \$200. Ms. Mkrtchyan merely did what she was told by respondent because she assumed that he would not instruct her to do something illegal.

10. Ms. Loomis had been working at the Z Center for approximately three or four years. She was a client service coordinator responsible for contacting patients and scheduling treatment procedures. All laser hair removal patients were seen by Nurse Farrar, and respondent did not usually perform a medical evaluation for these patients. Ms. Mkrtchyan and Ms. Merzlak, as well as respondent, performed the CoolSculpting procedures. Patients were offered the option of paying \$200 to be evaluated by respondent prior to the CoolSculpting procedure. Respondent authorized and directed all of the clinic staff to sell products to patients, including prescription strength skin care products. Patients did not have to see respondent in order to purchase prescription skin care products at the front counter.

The Board's January 2017 Undercover Investigation

11. On January 13, 2017, undercover investigators with the Board's Operation Safe Medicine unit visited the Z Center after receiving a consumer complaint alleging that respondent was allowing unlicensed persons to perform CoolSculpting procedures. Two undercover investigators visited the clinic posing as patients "Melissa Lopez" and "Carmen Lopez," with several other investigators and law enforcement officers assisting with the operation. Respondent was present at the clinic during this undercover operation.

12. Ms. Moreno Garay, posing as "Melissa Lopez," had previously made an appointment to have a consultation for CoolSculpting and laser hair removal at the Z Center. Upon arrival at the clinic, she completed a medical history form and received a CoolSculpting consultation from Ms. Mkrtchyan, who does not have a medical license issued by the Board. Ms.

Mkrtchyan explained the CoolSculpting procedure and informed Ms. Moreno Garay that she was a candidate for it. At that time, Ms. Mkrtchyan had performed CoolSculpting on a daily basis for four years.

13. Ms. Mkrtchyan also provided information about laser hair removal treatment, and told Ms. Moreno Garay that she appeared to be a candidate for laser hair removal as well. She explained, however, that the procedure could only be performed on Wednesdays and Saturdays because “you have to be a registered nurse to use a laser,” and the clinic’s registered nurse was only in on those days.

14. Ms. Aguilera-Marquez, posing as “Carmen Lopez,” mother to “Melissa Lopez,” told Ms. Mkrtchyan that she had melasma,² and asked her about purchasing prescription- strength Obagi, a skin care product used to treat melasma. Ms. Mkrtchyan told Carmen Aguilera-Marquez that it was not necessary to see respondent in order to receive the medication, although he was present in the clinic that day. Instead, Carmen Aguilera-Marquez was told that the clinic’s esthetician would come in to discuss the Obagi products with her.

15. Ms. Aguilera-Marquez then spoke with the clinic’s licensed esthetician, Ms. Merzlak, about prescription strength Obagi. Ms. Aguilera-Marquez informed Ms. Merzlak that it had been previously prescribed for her by a physician, and that it had worked well in the past. Ms. Merzlak, who does not have a medical license issued by the Board, gave Ms. Aguilera- Marquez information about the products and treatments that the Z Center provided. Ms. Merzlak recommended skin care products to purchase and take home to treat her melasma, as well as skin peels and a Nano Laser treatment that she could return for at a later date. Midway through her discussion with the undercover agents, Ms. Merzlak stepped out of the room for several minutes. When she returned, she listed the skin care product recommendations on a Z Center form bearing the symbol “Rx” in the upper right hand corner and signed the bottom of the form above a preprinted line that ended with “M.D.” (Ex. 29.) Ms. Aguilera-Marquez asked if she could take the form, which Ms. Merzlak agreed to provide after explaining that she first had to make a copy to place in Ms. Aguilera-Marquez’s patient chart.

16. After receiving the skin care consultation from Ms. Merzlak, Ms. Aguilera-Marquez returned to the front office, completed a medical history form at the direction of the receptionist, and purchased respondent’s prescription strength version of Obagi, called “Brighten.”

17. Ms. Moreno Garay also scheduled and paid for six laser hair removal sessions. Both undercover agents left the Z Center without receiving a medical consultation from respondent or another licensed physician and surgeon, physician assistant, or nurse practitioner.

The Board’s February 2017 Undercover Investigation

18. At approximately 10:00 a.m. on February 25, 2017, Ms. Moreno Garay and Ms. Aguilera-Marquez returned to the Z Center, again posing as patients “Melissa Lopez” and “Carmen Lopez.” They were accompanied by several other investigators and law enforcement officers from related agencies. Upon arrival at the clinic, Ms. Aguilera-Marquez asked Ms. Loomis, the

² Melasma is a patchy facial skin discoloration thought to be related to external sun exposure or hormonal changes. Treatment requires diagnosis by a physician or midlevel provider and the use of hydroquinone creams.

receptionist, for more Brighten, the prescription strength skin care medication she had purchased previously. Ms. Aguilera-Marquez asked Ms. Loomis if she needed to see respondent for the Brighten, but Ms. Loomis replied “no, you can just get it.” Ms. Loomis discussed with Ms. Aguilera-Marquez the use of the medication and the possibility of switching to other medications, but Ms. Aguilera-Marquez ultimately purchased the Brighten. Although respondent was in the office, Ms. Aguilera-Marquez never received a medical consultation with him or another licensed physician and surgeon, physician assistant, or nurse practitioner.

19. Meanwhile, Ms. Moreno Garay was escorted to an examination room where she met Nurse Farrar, who does not have a medical license issued by the Board. Nurse Farrar examined Ms. Moreno Garay’s lip and asked her about her medical history, her skin, and her use of medications and antibiotics. She also provided Ms. Moreno Garay with after-care instructions. At the conclusion of this consultation, Nurse Farrar turned on the laser machine, wiped Ms. Moreno Garay’s upper lip, and handed her glasses to prevent laser light exposure. She instructed Ms. Moreno Garay to lie back in her chair and, after taking a picture of Ms. Moreno Garay’s upper lip, picked up the laser machine handle to start the laser hair removal process. Before the procedure was to begin, Ms. Moreno Garay asked to use the restroom and exited the examination room.

20. The undercover operation at the Z Center terminated at approximately 10:30 a.m. Ms. Mrkrchyan, Ms. Merzlak, and Nurse Farrar were arrested for the unlicensed practice of medicine, and respondent was arrested for aiding and abetting the unlicensed practice of medicine.

Respondent’s Criminal Case

21. On March 29, 2017, in *People v. Zadeh* (Super. Ct. Los Angeles County, 2017, No. LA085556), respondent pled nolo contendere to violating Business and Professions Code section 2052, subdivision (b) (aiding and abetting the unlicensed practice of medicine), a misdemeanor. The court amended the charge to include “allowing recommendations for treatment and dispensing a topical cream that contains a prescription strength ingredient without a prior examination by the physician who was present in the office at all relevant times.” (Ex. C.) The court did not convict respondent; instead, the court ordered respondent to a diversion program to complete 40 hours of community service and pay \$7,650 in investigative costs to the Board. On January 5, 2018, respondent, providing proof he completed the community service, moved to withdraw his plea, plead not guilty, and have all criminal charges against him dismissed. The court granted the motion under Penal Code section 1385 and dismissed the case.

Mitigation and Rehabilitation

22. Respondent served on the Medical Executive Committee (MEC) at Valley Presbyterian Hospital from 2016 to 2017. He was appointed by the MEC to be chairman of the surgical review committee, a peer review committee, from 2012 to 2015. His surgical practice includes general surgery, some laproscopic and robotic surgery, hernia repairs, abdominal wall reconstructions, breast cancer, gall bladder, skin lesions and fatty tumor surgeries. He performs most of his surgeries at Valley Presbyterian Hospital; the rest he performs at Tarzana Hospital and at surgery centers. Respondent testified that he has never been disciplined by the Board.

23. Respondent became very interested in plastic surgery during his general surgery training; nonsurgical cosmetic procedures have become a passion of his. He loves providing wrinkle treatment, injections, laser hair removal, nonsurgical fat reduction, and skin tightening.

24. At Z Center, respondent himself performs all injections of Botox and fillers and all skin tightening by radio or laser. Ms. Merzlak, a licensed esthetician, performed all chemical peels, which her license entitles her to perform.

25. Ms. Mkrtchyan, respondent's medical assistant, and Ms. Merzlak performed CoolSculpting at Z Center, under respondent's direct supervision. In 2012 or 2013, the CoolSculpting manufacturer provided a two or three-day in-service training in its operation for respondent, Ms. Mkrtchyan, and Ms. Merzlak. Respondent further researched the technology before offering it, and conducted more in-depth in-house training regarding protocols for the procedure. The device's settings could not be adjusted by the operator. Respondent was always present in the room where CoolSculpting was performed, to oversee and observe the procedure when performed by his staff. At the times relevant to the allegations, respondent believed, incorrectly, at least in part based on statements by the manufacturer's representative, that his staff could perform the consultations for CoolSculpting. Determining whether a patient is an appropriate candidate for the procedure is not complicated. The only indication for the procedure is the presence of abdominal fat. The only contraindication is a history of cold cryoglobulinemia, a very rare autoimmune condition where exposure to cold causes blood clots. A question about that condition was always on the patient consent form used at Z Center. Nevertheless, respondent now performs all the CoolSculpting consultations himself. He testified that, if he knew at the time that he had to personally assess each patient, he would readily have done so.

26. Respondent's registered nurse, Ms. Farrar, was the only person performing laser hair removals. Respondent trained Ms. Farrar, first by having her watch videos and review documents provided by the manufacturer of the laser device, then by personally training her himself, and then by observing her perform the laser hair removal treatments for one month, during which time she performed about 30 to 50 treatments. After that period, Ms. Farrar performed the procedure herself, though respondent was always in the office when it was performed. Ms. Farrar would assess the patient's skin type and skin quality and enter the information into the laser device; the device set the laser level automatically, based on the manufacturer's settings. If there were any active skin lesions or other abnormalities that would preclude treatment, Ms. Farrar would call them to respondent's attention; respondent would evaluate the patient and determine whether it was safe to proceed. At the times relevant to the charges, if the patient asked for a consultation with respondent, respondent would consult for \$200, which would be applied to the cost of treatment. Ms. Farrar was also permitted by her license to perform laser hair removals. Only respondent, however, can provide consultations; Ms. Farrar cannot. Respondent consulted with every laser hair removal patient, with no consultation fee.

27. Respondent dispensed prescription skin care products, Brighten cream and serum, at Z Center. Brighten cream is seven percent hydroquinone. Patients would receive a consultation by respondent or Ms. Merzlak; if Ms. Merzlak did the consultation, she would present the case to respondent before the cream was dispensed.

a. On the first undercover patient visit, Ms. Merzlak discussed with respondent the patient's background, prior diagnosis of melisma (areas of hyperpigmentation), and prior use of

hydroquinone cream without adverse effects. In view of the "patient's" prior use, respondent approved the dispensing of the cream. The only contraindications for the cream are prior sensitivity to hydroquinone, active skin lesions, pregnancy, and current breast-feeding; Ms. Merzlak was familiar with those contraindications.

b. During the second undercover visit, receptionist Ms. Loomis dispensed additional Brighten, which had first been dispensed to the undercover patient by respondent's office a month earlier, without respondent reauthorizing it; this was not authorized or permitted by respondent, however. Respondent testified he believes Ms. Loomis was under the impression it was acceptable for her to allow a patient to repurchase the cream since respondent had previously authorized it. Respondent's policy now is that respondent must directly authorize any refill. He instituted this new policy days after his arrest. He is now present at the clinic every time creams are sold. As for the prescription form that Ms. Merzlak signed and provided to the undercover patient, respondent testified that this case was the first time he saw Ms. Merzlak's signature on such a form, which, in any case, was never supposed to be given to any patient, but was for internal use only.

28. After learning of the Board's investigation, respondent, through his counsel, retained another attorney to advise him on compliance with the Medical Practice Act at Z Center. Respondent testified that he adopted that attorney's suggestions. As of January and February 2017, respondent had oral policies at Z Center, though they were not written, and there was an employee handbook that all employees were required to read and sign. Respondent has adopted new, written policies, with protocols for each procedure performed at Z Center. Respondent did not produce the policies at hearing. The protocols for laser hair removal require that every patient be seen and cleared by respondent. For all laser procedures, the nurse must discuss skin type and laser settings with respondent, document the settings and the patient response after each treatment, and discuss the case with respondent. For CoolSculpting, every patient must meet with respondent for clearance for the procedure; the nurse may perform the treatment if respondent is in the room or an adjacent room. Respondent must see every patient before dispensing Brighten, and must be present when the product is handed to the patient.

29. At the time of the investigation, respondent maintained two separate offices, Z Center and another location for his surgical practice. Respondent has since moved his surgical practice to the Z Center office, so he can always provide necessary oversight. He testified that he takes full responsibility for the Medical Practice Act violations. He was confident in his staff's ability to perform CoolSculpting and laser hair removal, but gradually allowed staff to perform consultations that only he should have performed. Respondent now performs all required consultations. Up until the second undercover operation, respondent thought he was in compliance with the Medical Practice Act; he understands now that he was not. He testified that he has no one to blame but himself, and is extremely sorry he let the violations occur. Respondent testified that it was never his intention to run afoul of the law. He believes he should have consulted with a compliance attorney before opening Z Center. Before the end of February 2017, within days of his arrest, respondent hired the compliance attorney and reviewed every aspect of his practice. He adopted written protocols, and has his staff sign them after training. He eliminated use of the so-called prescription form. Respondent currently employs a registered nurse, an esthetician, and two people to staff the front desk. He no longer allows a medical assistant perform CoolSculpting.

30. After his court appearance, respondent paid the Board costs immediately. He chose to perform the community service in other than a medical capacity, though he had that option.

Respondent worked with the homeless, special needs children, and people with AIDS. He also continued to serve the underserved through Dr. Lomis's clinic. While the criminal case was pending, respondent was not allowed to continue practicing at Valley Presbyterian Hospital, where 90 percent of his practice was located; instead, he and the hospital agreed he would take a leave of absence until the criminal charges were resolved. He completed an ethics course at University of California, Irvine, about two weeks after the criminal case was dismissed, and, though not required to do so, he took a six-month follow-up course and plans to take a 12-month follow-up course in January 2019. Respondent testified that probation could result in revocation of his board certification, which would result in his losing staff privileges at hospitals and surgery centers. He would then have to have a full-time nonsurgical cosmetic practice.

31. Farshad Malekmehr, M.D., testified on respondent's behalf. Dr. Malekmehr is a cardiothoracic surgeon practicing since 1979. He was chief of surgery for four years, and is now chief of staff, at Mission Community Hospital, and is on staff at Valley Presbyterian Hospital. He has experience assessing physicians in connection with peer review and other issues. He has known respondent since respondent joined the staff at Valley Presbyterian Hospital eight years ago. He testified that respondent's standing at the hospital is excellent; there is an absence of complaints about respondent from patients and doctors on staff. Dr. Malekmehr finds respondent to be very professional, ethical, and honest, and very safe in surgery. His outcomes are all satisfactory, he is focused on patient safety, and he does not schedule inappropriate procedures. Dr. Malekmehr is aware of the charges in the Accusation; he has discussed them with respondent, who has expressed remorse. Dr. Malekmehr, who does not practice cosmetic surgery, believes respondent did not know all the rules governing who could perform the medical and cosmetic procedures offered at Z Center; respondent has no problem following hospital rules. The charges have not changed Dr. Malekmehr's opinion of respondent, formed over many years at the hospital. If respondent is placed on probation, Dr. Malekmehr believes, he may lose his board certification, which would require him to resign his privileges at Valley Presbyterian and Mission Community Hospitals.

32. Thomas J. Lomis, M.D., testified on respondent's behalf. Dr. Lomis is a surgical oncologist and general surgeon who is board certified in general surgery. From 2002 to about 2015, Dr. Lomis oversaw the emergency room call panel at Valley Presbyterian Hospital; he held the exclusive contract for emergency room surgery and hired and supervised surgeons; he also served as chief of surgery there. He owns the Valley Breast Care and Women's Health Center, which at two sites, through independent contractors Dr. Lomis supervises, provides breast cancer diagnosis and treatment for uninsured women, and raises money for breast reconstruction services, wigs, breast prostheses, and other uninsured services. Dr. Lomis has employed respondent as an independent contractor for the past three years, and has observed and supervised respondent's work as a surgeon. Dr. Lomis holds respondent in the highest regard, finding respondent to be very professional, an excellent surgeon who practices at the highest level of competency, and dedicated to serving a needy demographic. Respondent was very remorseful when disclosing to Dr. Lomis the charges in this matter. He observed that respondent remedied the situation immediately, performed community service, is now hyper-aware of the rules governing his cosmetic practice, and will not repeat the mistakes he made. Respondent has never violated any of Dr. Lomis's policies. Dr. Lomis testified that placing respondent's license on probation would be unjust and draconian, in that it could mean the loss of board certification and of hospital privileges.

33. Samuel Kashani, M.D., testified on respondent's behalf. Dr. Kashani is a general surgeon and geriatric surgeon and is board certified in general surgery. He has been the chief of surgery at Valley Presbyterian Hospital since 2018 and at Sherman Oaks Hospital since 2014. He teaches at the UCLA School of Nursing and has been in private practice since 2008. He performs surgical cosmetic procedures. Dr. Kashani met respondent about eight years ago; both were surgeons at Valley Presbyterian Hospital. They have served together on the medical executive committee and surgery committees, serve on the same surgery call panel, and have performed surgeries together, collaborating on difficult operations. Dr. Kashani finds respondent to be a morally sound person and physician, compassionate toward patients and hospital staff, professional and caring, a very good and meticulous surgeon, and the possessor of an excellent reputation. He testified that respondent is very remorseful about the issues in this matter and has made every effort to bring his clinic into compliance.

LEGAL CONCLUSIONS

Burden of Proof

1. The rigorous educational, training, and testing requirements for obtaining a physician's license justify imposing on complainant a burden of proof of clear and convincing evidence. (Evid. Code, § 115; see *Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911.)

Applicable Authority

2. The Board's highest priority is to protect the public. (Bus. & Prof. Code, § 2229.)³ The Board may take action against a licensee for aiding or abetting the unlicensed practice of medicine, which constitutes unprofessional conduct. (§§ 2052, subd. (b), 2234, subd. (a), 2264.)

3. A licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or "other action taken in relation to discipline" as the Board deems proper. (§ 2227.) Among those other actions listed is public reprimand of the licensee. (§ 2227, subd. (a)(4).)

Cause for Discipline

4. Cause exists to suspend or revoke respondent's license under section 2052, subdivision (b), in that clear and convincing evidence established that respondent aided and abetted unlicensed persons to engage in the practice of medicine or other mode of treating the sick or afflicted that requires a license to practice, as set forth in the stipulation of facts and in Factual Findings 4 through 37.

5. Cause exists to suspend or revoke respondent's license under sections 2234, subdivision (a), and 2264, in that clear and convincing evidence established that respondent aided

³ Further statutory references are to the Business and Professions Code.

and abetted unlicensed persons to engage in the practice of medicine or other mode of treating the sick or afflicted that requires a license to practice, as set forth in the stipulation of facts and in Factual Findings 4 through 37.

6. In arguing that respondent's license should be placed on probation, complainant's counsel suggested that, given the steps respondent has taken to correct his practices, a justifiable departure from the Board's Disciplinary Guidelines would impose a period of less than five years' probation, no suspension, no ethics course requirement, an education course, and a practice monitor in view of respondent's failure to produce his new protocols. Respondent's counsel argued that a public reprimand would be sufficient to protect the public, in light of the remediation steps respondent has taken. He noted the irony of imposing probationary terms on respondent's license as a means of protecting the public: any resulting loss of board certification and of hospital privileges would limit respondent to his nonsurgical cosmetic medicine practice at Z Center, where he committed the violation; the Board has no issues with respondent's surgical practice, which would be the area negatively affected by probation.

7. In view of all the evidence, including evidence of respondent's reputation in the surgical community and his testimony about his efforts to change his practices at Z Center, his lack of intent to violate the Medical Practice Act, and complainant's failure to clearly and convincingly establish that respondent cannot practice medicine in a safe and proper manner, the safety of the public will be protected if respondent is issued a public reprimand, under section 2227, subdivision (a)(4). The purpose of a disciplinary action such as this one is to protect the public, and not to punish the licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) While some form of censure is warranted to ensure public safety and awareness, in this case neither revocation nor Board oversight through probation is appropriate. License revocation or suspension would be unduly punitive, and the probation conditions set forth in the disciplinary guidelines are unnecessary under the circumstances presented. A public reprimand and an order that respondent enroll in and successfully complete a course on the services provided at Z Center and provide the Board with a copy of the written policies and procedures he has adopted at Z Center will best protect the public without imposing overly harsh and punitive discipline on respondent.

ORDER

1. Respondent Michael Aurash Zadeh, M.D., is hereby publicly reprimanded under Business and Professions Code section 2227, subdivision (a)(4), for the conduct identified in the stipulation of facts and in Legal Conclusions 4 through 7.

2. Within one year of the effective date of this Decision, respondent shall enroll in and complete a course in nonsurgical cosmetic medicine, after obtaining Board approval for the course. Respondent shall pay for the course, which shall not replace any of the Continuing Medical Education (CME) requirements for licensure renewal. Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course.

3. Within 30 days of the effective date of this Decision, respondent shall provide to the Board all written policies and protocols adopted after February 25, 2017, for all procedures performed at Z Center.

4. Respondent's failure to comply with any of these requirements shall be considered a violation of a Board order and shall constitute unprofessional conduct and a cause for discipline.

This Decision shall become effective on: June 21, 2019

It is so ORDERED: May 23, 2019.

A handwritten signature in black ink, appearing to read "Kristina Lawson", written over a horizontal line.

Kristina D. Lawson, J.D, Chair
Panel B
Medical Board of California

**BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)
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MICHAEL AURASH ZADEH, M.D.)

Case No.: 800-2015-015340

Physician's & Surgeon's)
Certificate No: A 99098)
)

OAH No.: 2017110541

Respondent)
)
)

**ORDER OF NON-ADOPTION
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit directed at whether the level of discipline ordered is sufficient to protect the public. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Kennedy Court Reporters, 920 West 17th Street, Second Floor, Santa Ana, CA 92706. The telephone number is (714) 835-0366


To order a copy of the exhibits, please submit a written request to this Board.

In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
916-263-2451
Attention: Dianne Richards

Date: February 11, 2019



Kristina D. Lawson, J.D., Chair
Panel B

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PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on November 5, 2018, in Los Angeles.

Nicholas B.C. Schultz, Deputy Attorney General, represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs (Department), State of California.

Peter R. Osinoff and Derek O'Reilly-Jones, Attorneys at Law, represented respondent Michael Aurash Zadeh, M.D., who was present.

Oral and documentary evidence was received. The record was closed and the matter was submitted on November 5, 2018.

Protective Order

The ALJ ordered redaction of certain exhibits to provide privacy protection.

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Complainant alleged two causes for discipline in the Accusation, for aiding and abetting the unlicensed practice of medicine and for unprofessional conduct based on the aiding and abetting. At the start of the hearing, the parties submitted a written stipulation that provided that respondent "admits to the first and second causes for discipline set forth in [the] Accusation Consequently, the parties stipulate and agree that [r]espondent's license is subject to discipline, while reserving the right to present evidence and argument

concerning the appropriate disciplinary outcome in this matter.” (Ex. 32.)¹ The parties stipulated to certain underlying facts and that certain exhibits were admissible in evidence.

FACTUAL FINDINGS

Jurisdiction

1. Complainant filed the Accusation in her official capacity. Respondent timely filed a notice of defense.

2. The Board issued Physician and Surgeon’s Certificate No. A 99098 to respondent on February 28, 2007. That certificate is scheduled to expire on May 31, 2020.

Respondent’s Background

3. Respondent is in private practice as a general surgeon and has hospital privileges at Providence Tarzana Hospital and Valley Presbyterian Hospital. He is also the owner and medical director of Z Center for Cosmetic Health, a non-surgical cosmetic medicine practice. Respondent obtained his medical degree from St. George’s University School of Medicine in St. George’s, Grenada, in 2004. He completed an internship in general surgery and a surgical residency at Saint Barnabas Medical Center in New Jersey, where he was Chief Surgical Resident in 2008 to 2009. He is board-certified by the American Board of Surgery.

Respondent’s Non-Surgical Cosmetic Medicine Practice

4. At Z Center, which at relevant times constituted about 40 percent of respondent’s medical practice (his general surgical practice constitutes the remaining 60 percent), respondent offers CoolSculpting, laser hair removal, and prescription skin care products.

5. CoolSculpting is a non-surgical, fat-freezing procedure that utilizes a device that triggers apoptosis, or natural cell death, in fat cells. Over time, the human body naturally eliminates these dead cells. The CoolSculpting procedure involves placing applicator cups on fatty areas of the body, connecting them to the CoolSculpting machine, and turning it on for about an hour. At the end of the hour, the applicator cups are removed and the CoolSculpting technician massages the previously cupped area.

6. At Z Center in early 2017, respondent employed a licensed registered nurse, Amanda Farrar, a licensed esthetician, Rebecca Merzlak, a cosmetic treatment specialist, Siranush Mkrtchyan, and a client service coordinator, Lyndi Loomis.

7. Ms. Merzlak had worked for respondent for approximately two years and performed CoolSculpting procedures. Ms. Merzlak consulted with patients about the

¹ In view of this stipulation, neither party introduced expert witness testimony.

CoolSculpting procedures at no charge; patients could choose instead to have a consultation with respondent for \$200. Ms. Merzlak also consulted with patients seeking respondent's prescription strength version of Obagi, known as Brighten, and recommended Brighten to patients. Respondent trained her on how to use the skin care products and what to recommend to patients.

8. Ms. Farrar had worked at the Z Center since October 2016. She was the only licensed registered nurse working at the clinic. Respondent trained her to use the laser hair removal machine. Respondent generally did not consult the laser hair removal patients unless they specifically requested to see him. Nurse Farrar conducted medical histories and evaluations to determine if patients were good candidates for laser hair removal. Respondent trained her to conduct these evaluations and to determine whether laser hair removal was an appropriate treatment procedure for the patient.

9. Ms. Mkrtchyan had worked at the Z Center since February 2013. She was a cosmetic treatment specialist and performed CoolSculpting procedures. Ms. Mkrtchyan saw patients seeking CoolSculpting and performed evaluations to determine whether they were good candidates for the procedure. Ms. Mkrtchyan consulted with patients about the CoolSculpting procedures at no charge; patients could choose instead to have a consultation with respondent for \$200. Ms. Mkrtchyan merely did what she was told by respondent because she assumed that he would not instruct her to do something illegal.

10. Ms. Loomis had been working at the Z Center for approximately three or four years. She was a client service coordinator responsible for contacting patients and scheduling treatment procedures. All laser hair removal patients were seen by Nurse Farrar, and respondent did not usually perform a medical evaluation for these patients. Ms. Mkrtchyan and Ms. Merzlak, as well as respondent, performed the CoolSculpting procedures. Patients were offered the option of paying \$200 to be evaluated by respondent prior to the CoolSculpting procedure. Respondent authorized and directed all of the clinic staff to sell products to patients, including prescription strength skin care products. Patients did not have to see respondent in order to purchase prescription skin care products at the front counter.

The Board's January 2017 Undercover Investigation

11. On January 13, 2017, undercover investigators with the Board's Operation Safe Medicine unit visited the Z Center after receiving a consumer complaint alleging that respondent was allowing unlicensed persons to perform CoolSculpting procedures. Two undercover investigators visited the clinic posing as patients "Melissa Lopez" and "Carmen Lopez," with several other investigators and law enforcement officers assisting with the operation. Respondent was present at the clinic during this undercover operation.

12. Ms. Moreno Garay, posing as "Melissa Lopez," had previously made an appointment to have a consultation for CoolSculpting and laser hair removal at the Z Center. Upon arrival at the clinic, she completed a medical history form and received a CoolSculpting consultation from Ms. Mkrtchyan, who does not have a medical license issued by the Board. Ms. Mkrtchyan explained the CoolSculpting procedure and informed Ms. Moreno Garay that

she was a candidate for it. At that time, Ms. Mkrtchyan had performed CoolSculpting on a daily basis for four years.

13. Ms. Mkrtchyan also provided information about laser hair removal treatment, and told Ms. Moreno Garay that she appeared to be a candidate for laser hair removal as well. She explained, however, that the procedure could only be performed on Wednesdays and Saturdays because “you have to be a registered nurse to use a laser,” and the clinic’s registered nurse was only in on those days.

14. Ms. Aguilera-Marquez, posing as “Carmen Lopez,” mother to “Melissa Lopez,” told Ms. Mkrtchyan that she had melasma,² and asked her about purchasing prescription-strength Obagi, a skin care product used to treat melasma. Ms. Mkrtchyan told Carmen Aguilera-Marquez that it was not necessary to see respondent in order to receive the medication, although he was present in the clinic that day. Instead, Carmen Aguilera-Marquez was told that the clinic’s esthetician would come in to discuss the Obagi products with her.

15. Ms. Aguilera-Marquez then spoke with the clinic’s licensed esthetician, Ms. Merzlak, about prescription strength Obagi. Ms. Aguilera-Marquez informed Ms. Merzlak that it had been previously prescribed for her by a physician, and that it had worked well in the past. Ms. Merzlak, who does not have a medical license issued by the Board, gave Ms. Aguilera-Marquez information about the products and treatments that the Z Center provided. Ms. Merzlak recommended skin care products to purchase and take home to treat her melasma, as well as skin peels and a Nano Laser treatment that she could return for at a later date. Midway through her discussion with the undercover agents, Ms. Merzlak stepped out of the room for several minutes. When she returned, she listed the skin care product recommendations on a Z Center form bearing the symbol “Rx” in the upper right hand corner and signed the bottom of the form above a preprinted line that ended with “M.D.” (Ex. 29.) Ms. Aguilera-Marquez asked if she could take the form, which Ms. Merzlak agreed to provide after explaining that she first had to make a copy to place in Ms. Aguilera-Marquez’s patient chart.

16. After receiving the skin care consultation from Ms. Merzlak, Ms. Aguilera-Marquez returned to the front office, completed a medical history form at the direction of the receptionist, and purchased respondent’s prescription strength version of Obagi, called “Brighten.”

17. Ms. Moreno Garay also scheduled and paid for six laser hair removal sessions. Both undercover agents left the Z Center without receiving a medical consultation from respondent or another licensed physician and surgeon, physician assistant, or nurse practitioner.

² Melasma is a patchy facial skin discoloration thought to be related to external sun exposure or hormonal changes. Treatment requires diagnosis by a physician or midlevel provider and the use of hydroquinone creams.

The Board's February 2017 Undercover Investigation

18. At approximately 10:00 a.m. on February 25, 2017, Ms. Moreno Garay and Ms. Aguilera-Marquez returned to the Z Center, again posing as patients "Melissa Lopez" and "Carmen Lopez." They were accompanied by several other investigators and law enforcement officers from related agencies. Upon arrival at the clinic, Ms. Aguilera-Marquez asked Ms. Loomis, the receptionist, for more Brighten, the prescription strength skin care medication she had purchased previously. Ms. Aguilera-Marquez asked Ms. Loomis if she needed to see respondent for the Brighten, but Ms. Loomis replied "no, you can just get it." Ms. Loomis discussed with Ms. Aguilera-Marquez the use of the medication and the possibility of switching to other medications, but Ms. Aguilera-Marquez ultimately purchased the Brighten. Although respondent was in the office, Ms. Aguilera-Marquez never received a medical consultation with him or another licensed physician and surgeon, physician assistant, or nurse practitioner.

19. Meanwhile, Ms. Moreno Garay was escorted to an examination room where she met Nurse Farrar, who does not have a medical license issued by the Board. Nurse Farrar examined Ms. Moreno Garay's lip and asked her about her medical history, her skin, and her use of medications and antibiotics. She also provided Ms. Moreno Garay with after-care instructions. At the conclusion of this consultation, Nurse Farrar turned on the laser machine, wiped Ms. Moreno Garay's upper lip, and handed her glasses to prevent laser light exposure. She instructed Ms. Moreno Garay to lie back in her chair and, after taking a picture of Ms. Moreno Garay's upper lip, picked up the laser machine handle to start the laser hair removal process. Before the procedure was to begin, Ms. Moreno Garay asked to use the restroom and exited the examination room.

20. The undercover operation at the Z Center terminated at approximately 10:30 a.m. Ms. Mrkrchyan, Ms. Merzlak, and Nurse Farrar were arrested for the unlicensed practice of medicine, and respondent was arrested for aiding and abetting the unlicensed practice of medicine.

Respondent's Criminal Case

21. On March 29, 2017, in *People v. Zadeh* (Super. Ct. Los Angeles County, 2017, no. LA085556), respondent pled nolo contendere to violating Business and Professions Code section 2052, subdivision (b) (aiding and abetting the unlicensed practice of medicine), a misdemeanor. The court amended the charge to include "allowing recommendations for treatment and dispensing a topical cream that contains a prescription strength ingredient without a prior examination by the physician who was present in the office at all relevant times." (Ex. C.) The court did not convict respondent; instead, the court ordered respondent to a diversion program to complete 40 hours of community service and pay \$7,650 in investigative costs to the Board. On January 5, 2018, respondent, providing proof he completed the community service, moved to withdraw his plea, plead not guilty, and have all criminal charges against him dismissed. The court granted the motion under Penal Code section 1385 and dismissed the case.

Mitigation and Rehabilitation

22. Respondent served on the Medical Executive Committee (MEC) at Valley Presbyterian Hospital from 2016 to 2017. He was appointed by the MEC to be chairman of the surgical review committee, a peer review committee, from 2012 to 2015. His surgical practice includes general surgery, some laproscopic and robotic surgery, hernia repairs, abdominal wall reconstructions, breast cancer, gall bladder, skin lesions and fatty tumor surgeries. He performs most of his surgeries at Valley Presbyterian Hospital; the rest he performs at Tarzana Hospital and at surgery centers. Respondent testified that he has never been disciplined by the Board.

23. Respondent became very interested in plastic surgery during his general surgery training; nonsurgical cosmetic procedures have become a passion of his. He loves providing wrinkle treatment, injections, laser hair removal, nonsurgical fat reduction, and skin tightening.

24. At Z Center, respondent himself performs all injections of Botox and fillers and all skin tightening by radio or laser. Ms. Merzlak, a licensed esthetician, performed all chemical peels, which her license entitles her to perform.

25. Ms. Mkrtchyan, respondent's medical assistant, and Ms. Merzlak performed CoolSculpting at Z Center, under respondent's direct supervision. In 2012 or 2013, the CoolSculpting manufacturer provided a two or three-day in-service training in its operation for respondent, Ms. Mkrtchyan, and Ms. Merzlak. Respondent further researched the technology before offering it, and conducted more in-depth in-house training regarding protocols for the procedure. The device's settings could not be adjusted by the operator. Respondent was always present in the room where CoolSculpting was performed, to oversee and observe the procedure when performed by his staff. At the times relevant to the allegations, respondent believed, incorrectly, at least in part based on statements by the manufacturer's representative, that his staff could perform the consultations for CoolSculpting. Determining whether a patient is an appropriate candidate for the procedure is not complicated. The only indication for the procedure is the presence of abdominal fat. The only contraindication is a history of cold cryoglobulinemia, a very rare autoimmune condition where exposure to cold causes blood clots. A question about that condition was always on the patient consent form used at Z Center. Nevertheless, respondent now performs all the CoolSculpting consultations himself. He testified that, if he knew at the time that he had to personally assess each patient, he would readily have done so.

26. Respondent's registered nurse, Ms. Farrar, was the only person performing laser hair removals. Respondent trained Ms. Farrar, first by having her watch videos and review documents provided by the manufacturer of the laser device, then by personally training her himself, and then by observing her perform the laser hair removal treatments for one month, during which time she performed about 30 to 50 treatments. After that period, Ms. Farrar performed the procedure herself, though respondent was always in the office when it was performed. Ms. Farrar would assess the patient's skin type and skin quality and enter the information into the laser device; the device set the laser level automatically, based on the manufacturer's settings. If there were any active skin lesions or other abnormalities that would

preclude treatment, Ms. Farrar would call them to respondent's attention; respondent would evaluate the patient and determine whether it was safe to proceed. At the times relevant to the charges, if the patient asked for a consultation with respondent, respondent would consult for \$200, which would be applied to the cost of treatment. Ms. Farrar was also permitted by her license to perform laser hair removals. Only respondent, however, can provide consultations; Ms. Farrar cannot. Respondent consulted with every laser hair removal patient, with no consultation fee.

27. Respondent dispensed prescription skin care products, Brighten cream and serum, at Z Center. Brighten cream is seven percent hydroquinone. Patients would receive a consultation by respondent or Ms. Merzlak; if Ms. Merzlak did the consultation, she would present the case to respondent before the cream was dispensed.

a. On the first undercover patient visit, Ms. Merzlak discussed with respondent the patient's background, prior diagnosis of melisma (areas of hyperpigmentation), and prior use of hydroquinone cream without adverse effects. In view of the "patient's" prior use, respondent approved the dispensing of the cream. The only contraindications for the cream are prior sensitivity to hydroquinone, active skin lesions, pregnancy, and current breast-feeding; Ms. Merzlak was familiar with those contraindications.

b. During the second undercover visit, receptionist Ms. Loomis dispensed additional Brighten, which had first been dispensed to the undercover patient by respondent's office a month earlier, without respondent reauthorizing it; this was not authorized or permitted by respondent, however. Respondent testified he believes Ms. Loomis was under the impression it was acceptable for her to allow a patient to repurchase the cream since respondent had previously authorized it. Respondent's policy now is that respondent must directly authorize any refill. He instituted this new policy days after his arrest. He is now present at the clinic every time creams are sold. As for the prescription form that Ms. Merzlak signed and provided to the undercover patient, respondent testified that this case was the first time he saw Ms. Merzlak's signature on such a form, which, in any case, was never supposed to be given to any patient, but was for internal use only.

28. After learning of the Board's investigation, respondent, through his counsel, retained another attorney to advise him on compliance with the Medical Practice Act at Z Center. Respondent testified that he adopted that attorney's suggestions. As of January and February 2017, respondent had oral policies at Z Center, though they were not written, and there was an employee handbook that all employees were required to read and sign. Respondent has adopted new, written policies, with protocols for each procedure performed at Z Center. Respondent did not produce the policies at hearing. The protocols for laser hair removal require that every patient be seen and cleared by respondent. For all laser procedures, the nurse must discuss skin type and laser settings with respondent, document the settings and the patient response after each treatment, and discuss the case with respondent. For CoolSculpting, every patient must meet with respondent for clearance for the procedure; the nurse may perform the

treatment if respondent is in the room or an adjacent room. Respondent must see every patient before dispensing Brighten, and must be present when the product is handed to the patient.

29. At the time of the investigation, respondent maintained two separate offices, Z Center and another location for his surgical practice. Respondent has since moved his surgical practice to the Z Center office, so he can always provide necessary oversight. He testified that he takes full responsibility for the Medical Practice Act violations. He was confident in his staff's ability to perform CoolSculpting and laser hair removal, but gradually allowed staff to perform consultations that only he should have performed. Respondent now performs all required consultations. Up until the second undercover operation, respondent thought he was in compliance with the Medical Practice Act; he understands now that he was not. He testified that he has no one to blame but himself, and is extremely sorry he let the violations occur. Respondent testified that it was never his intention to run afoul of the law. He believes he should have consulted with a compliance attorney before opening Z Center. Before the end of February 2017, within days of his arrest, respondent hired the compliance attorney and reviewed every aspect of his practice. He adopted written protocols, and has his staff sign them after training. He eliminated use of the so-called prescription form. Respondent currently employs a registered nurse, an esthetician, and two people to staff the front desk. He no longer allows a medical assistant perform CoolSculpting.

30. After his court appearance, respondent paid the Board costs immediately. He chose to perform the community service in other than a medical capacity, though he had that option. Respondent worked with the homeless, special needs children, and people with AIDS. He also continued to serve the underserved through Dr. Lomis's clinic. While the criminal case was pending, respondent was not allowed to continue practicing at Valley Presbyterian Hospital, where 90 percent of his practice was located; instead, he and the hospital agreed he would take a leave of absence until the criminal charges were resolved. He completed an ethics course at University of California, Irvine, about two weeks after the criminal case was dismissed, and, though not required to do so, he took a six-month follow-up course and plans to take a 12-month follow-up course in January 2019. Respondent testified that probation could result in revocation of his board certification, which would result in his losing staff privileges at hospitals and surgery centers. He would then have to have a full-time nonsurgical cosmetic practice.

31. Farshad Malekmehr, M.D., testified on respondent's behalf. Dr. Malekmehr is a cardiothoracic surgeon practicing since 1979. He was chief of surgery for four years, and is now chief of staff, at Mission Community Hospital, and is on staff at Valley Presbyterian Hospital. He has experience assessing physicians in connection with peer review and other issues. He has known respondent since respondent joined the staff at Valley Presbyterian Hospital eight years ago. He testified that respondent's standing at the hospital is excellent; there is an absence of complaints about respondent from patients and doctors on staff. Dr. Malekmehr finds respondent to be very professional, ethical, and honest, and very safe in surgery. His outcomes are all satisfactory, he is focused on patient safety, and he does not schedule inappropriate procedures. Dr. Malekmehr is aware of the charges in the Accusation; he has discussed them with respondent, who has expressed remorse. Dr. Malekmehr, who does not practice cosmetic

surgery, believes respondent did not know all the rules governing who could perform the medical and cosmetic procedures offered at Z Center; respondent has no problem following hospital rules. The charges have not changed Dr. Malekmehr's opinion of respondent, formed over many years at the hospital. If respondent is placed on probation, Dr. Malekmehr believes, he may lose his board certification, which would require him to resign his privileges at Valley Presbyterian and Mission Community Hospitals.

32. Thomas J. Lomis, M.D., testified on respondent's behalf. Dr. Lomis is a surgical oncologist and general surgeon who is board certified in general surgery. From 2002 to about 2015, Dr. Lomis oversaw the emergency room call panel at Valley Presbyterian Hospital; he held the exclusive contract for emergency room surgery and hired and supervised surgeons; he also served as chief of surgery there. He owns the Valley Breast Care and Women's Health Center, which at two sites, through independent contractors Dr. Lomis supervises, provides breast cancer diagnosis and treatment for uninsured women, and raises money for breast reconstruction services, wigs, breast prostheses, and other uninsured services. Dr. Lomis has employed respondent as an independent contractor for the past three years, and has observed and supervised respondent's work as a surgeon. Dr. Lomis holds respondent in the highest regard, finding respondent to be very professional, an excellent surgeon who practices at the highest level of competency, and dedicated to serving a needy demographic. Respondent was very remorseful when disclosing to Dr. Lomis the charges in this matter. He observed that respondent remedied the situation immediately, performed community service, is now hyper-aware of the rules governing his cosmetic practice, and will not repeat the mistakes he made. Respondent has never violated any of Dr. Lomis's policies. Dr. Lomis testified that placing respondent's license on probation would be unjust and draconian, in that it could mean the loss of board certification and of hospital privileges.

33. Samuel Kashani, M.D., testified on respondent's behalf. Dr. Kashani is a general surgeon and geriatric surgeon and is board certified in general surgery. He has been the chief of surgery at Valley Presbyterian Hospital since 2018 and at Sherman Oaks Hospital since 2014. He teaches at the UCLA School of Nursing and has been in private practice since 2008. He performs surgical cosmetic procedures. Dr. Kashani met respondent about eight years ago; both were surgeons at Valley Presbyterian Hospital. They have served together on the medical executive committee and surgery committees, serve on the same surgery call panel, and have performed surgeries together, collaborating on difficult operations. Dr. Kashani finds respondent to be a morally sound person and physician, compassionate toward patients and hospital staff, professional and caring, a very good and meticulous surgeon, and the possessor of an excellent reputation. He testified that respondent is very remorseful about the issues in this matter and has made every effort to bring his clinic into compliance.

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LEGAL CONCLUSIONS

Burden of Proof

1. The rigorous educational, training, and testing requirements for obtaining a physician's license justify imposing on complainant a burden of proof of clear and convincing evidence. (Evid. Code, § 115; see *Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911.)

Applicable Authority

2. The Board's highest priority is to protect the public. (Bus. & Prof. Code, § 2229.)³ The Board may take action against a licensee for aiding or abetting the unlicensed practice of medicine, which constitutes unprofessional conduct. (§§ 2052, subd. (b), 2234, subd. (a), 2264.)

3. A licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or "other action taken in relation to discipline" as the Board deems proper. (§ 2227.) Among those other actions listed is public reprimand of the licensee. (§ 2227, subd. (a)(4).)

Cause for Discipline

4. Cause exists to suspend or revoke respondent's license under section 2052, subdivision (b), in that clear and convincing evidence established that respondent aided and abetted unlicensed persons to engage in the practice of medicine or other mode of treating the sick or afflicted that requires a license to practice, as set forth in the stipulation of facts and in Factual Findings 4 through 37.

5. Cause exists to suspend or revoke respondent's license under sections 2234, subdivision (a), and 2264, in that clear and convincing evidence established that respondent aided and abetted unlicensed persons to engage in the practice of medicine or other mode of treating the sick or afflicted that requires a license to practice, as set forth in the stipulation of facts and in Factual Findings 4 through 37.

6. In arguing that respondent's license should be placed on probation, complainant's counsel suggested that, given the steps respondent has taken to correct his practices, a justifiable departure from the Board's Disciplinary Guidelines would impose a period of less than five years' probation, no suspension, no ethics course requirement, an education course, and a practice monitor in view of respondent's failure to produce his new

³ Further statutory references are to the Business and Professions Code.

protocols. Respondent's counsel argued that a public reprimand would be sufficient to protect the public, in light of the remediation steps respondent has taken. He noted the irony of imposing probationary terms on respondent's license as a means of protecting the public: any resulting loss of board certification and of hospital privileges would limit respondent to his nonsurgical cosmetic medicine practice at Z Center, where he committed the violation; the Board has no issues with respondent's surgical practice, which would be the area negatively affected by probation.

7. In view of all the evidence, including evidence of respondent's reputation in the surgical community and his testimony about his efforts to change his practices at Z Center, his lack of intent to violate the Medical Practice Act, and complainant's failure to clearly and convincingly establish that respondent cannot practice medicine in a safe and proper manner, the safety of the public will be protected if respondent is issued a public reprimand, under section 2227, subdivision (a)(4). The purpose of a disciplinary action such as this one is to protect the public, and not to punish the licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) While some form of censure is warranted to ensure public safety and awareness, in this case neither revocation nor Board oversight through probation is appropriate. License revocation or suspension would be unduly punitive, and the probation conditions set forth in the disciplinary guidelines are unnecessary under the circumstances presented. A public reprimand and an order that respondent enroll in and successfully complete a course on the services provided at Z Center and provide the Board with a copy of the written policies and procedures he has adopted at Z Center will best protect the public without imposing overly harsh and punitive discipline on respondent.

ORDER

1. Respondent Michael Aurash Zadeh, M.D., is hereby publicly reprimanded under Business and Professions Code section 2227, subdivision (a)(4), for the conduct identified in the stipulation of facts and in Legal Conclusions 4 through 7.

2. Within one year of the effective date of this Decision, respondent shall enroll in and complete a course in nonsurgical cosmetic medicine, after obtaining Board approval for the course. Respondent shall pay for the course, which shall not replace any of the Continuing Medical Education (CME) requirements for licensure renewal. Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course.

3. Within 30 days of the effective date of this Decision, respondent shall provide to the Board all written policies and protocols adopted after February 25, 2017, for all procedures performed at Z Center.

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4. Respondent's failure to comply with any of these requirements shall be considered a violation of a Board order and shall constitute unprofessional conduct and a cause for discipline.

DATED: November 28, 2018

DocuSigned by:

Howard W. Cohen

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HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearing

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *September 28, 2017*
BY: R. Vong **ANALYST**

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2015-015340

12 MICHAEL AURASH ZADEH, M.D.
16542 Ventura Boulevard, Suite 304
13 Encino, California 91436

A C C U S A T I O N

14 Physician's and Surgeon's Certificate
15 No. A 99098,

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Director of the Medical Board of California, Department of Consumer
21 Affairs (Board).

22 2. On or about February 28, 2007, the Medical Board of California issued Physician's
23 and Surgeon's Certificate Number A 99098 to Michael Aurash Zadeh, M.D. (Respondent). The
24 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
25 charges brought herein and will expire on December 31, 2018, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board, under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2001.1 of the Code states:

2 “Protection of the public shall be the highest priority for the Medical Board of California in
3 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the
4 public is inconsistent with other interests sought to be promoted, the protection of the public shall
5 be paramount.”

6 5. Section 2227 of the Code states:

7 “(a) A licensee whose matter has been heard by an administrative law judge of the Medical
8 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
9 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
10 action with the board, may, in accordance with the provisions of this chapter:

11 “(1) Have his or her license revoked upon order of the board.

12 “(2) Have his or her right to practice suspended for a period not to exceed one year upon
13 order of the board.

14 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
15 order of the board.

16 “(4) Be publicly reprimanded by the board. The public reprimand may include a
17 requirement that the licensee complete relevant educational courses approved by the board.

18 “(5) Have any other action taken in relation to discipline as part of an order of probation, as
19 the board or an administrative law judge may deem proper.

20 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
21 review or advisory conferences, professional competency examinations, continuing education
22 activities, and cost reimbursement associated therewith that are agreed to with the board and
23 successfully completed by the licensee, or other matters made confidential or privileged by
24 existing law, is deemed public, and shall be made available to the public by the board pursuant to
25 Section 803.1.”

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28 ///

1 6. Section 2234 of the Code, states:

2 “The board shall take action against any licensee who is charged with unprofessional
3 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
4 limited to, the following:

5 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
6 violation of, or conspiring to violate any provision of this chapter.

7 “...”

8 7. Section 2051 of the Code states:

9 “The physician’s and surgeon’s certificate authorizes the holder to use drugs or devices in
10 or upon human beings and to sever or penetrate the tissues of human beings and to use any and all
11 other methods in the treatment of diseases, injuries, deformities, and other physical and mental
12 conditions.”

13 8. Section 2052 of the Code states:

14 “(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who
15 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or
16 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,
17 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
18 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
19 certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being
20 authorized to perform the act pursuant to a certificate obtained in accordance with some other
21 provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand
22 dollars (\$10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
23 Code, by imprisonment in a county jail not exceeding one year, or by both the fine and either
24 imprisonment.

25 “(b) Any person who conspires with or aids or abets another to commit any act described in
26 subdivision (a) is guilty of a public offense, subject to the punishment described in that
27 subdivision.

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“(c) The remedy provided in this section shall not preclude any other remedy provided by law.”

9. Section 2264 of the Code states:

“The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in the practice of medicine or any other mode of treating the sick or afflicted which requires a license to practice constitutes unprofessional conduct.”

FACTUAL SUMMARY

10. Respondent owns the Z Center for Cosmetic Health, which is an incorporated medical spa clinic located at 14658 Ventura Boulevard, in Sherman Oaks, California. Respondent is the chief executive officer, chief financial officer, secretary, and the medical director for the corporation. Respondent employs a registered nurse (Amanda Farrar), esthetician (Rebecca Merzlak), cosmetic treatment specialist (Siranush Mkrtchyan), and a client service coordinator (Lyndi Loomis).

January 2017 Undercover Operation

11. At approximately 10:00 a.m. on January 13, 2017, undercover investigators with the Board's Operation Safe Medicine unit visited the Z Center for Cosmetic Health after receiving a consumer complaint alleging that Respondent was allowing unlicensed persons to perform CoolSculpting¹ procedures. Two undercover investigators visited the clinic posed as patients "Melissa Lopez" and "Carmen Lopez,"² with several other investigators and law enforcement officers assisting with the operation. Respondent was present at the clinic during this undercover operation.

12. Melissa Lopez had previously made an appointment to have a consultation for CoolSculpting and laser hair removal at the Z Center for Cosmetic Health. Upon arrival at the

¹ “CoolSculpting” is a non-surgical, fat-freezing procedure that utilizes a device to freeze and kill fat cells in the human body. Over time, the human body naturally eliminates these dead cells.

² In order to simplify the factual summary, the two investigators with Operation Safe Medicine posing as “Melissa Lopez” and “Carmen Lopez” will be referred to by their fictitious names.

1 clinic, Melissa Lopez completed a medical history form before receiving a CoolSculpting
2 consultation from Siranush Mkrtchyan, who does not have a medical license issued by the Board.
3 Mkrtchyan explained the CoolSculpting procedure, identified Melissa Lopez as a good candidate
4 for it, and recommended the procedure. Mkrtchyan stated that she had performed CoolSculpting
5 on a daily basis for the last four years. Mkrtchyan also explained the laser hair removal treatment
6 and told Melissa Lopez that there would be no nurse consultation prior to the procedure. Instead,
7 Mkrtchyan told Melissa Lopez that she was a good candidate for laser hair removal.

8 13. Carmen Lopez also spoke with Siranush Mkrtchyan about purchasing prescription
9 strength Obagi, which is a skin care product used to treat Melasma.³ Mkrtchyan told Carmen
10 Lopez that it was not necessary to see Respondent in order to receive the medication, although she
11 confirmed that Respondent was present in the clinic that day. Instead, Carmen Lopez spoke with
12 the clinic's esthetician, Rebecca Merzlak, about Respondent's prescription strength version of
13 Obagi that was sold at the Z Center for Cosmetic Health. Rebecca Merzlak, who does not have a
14 medical license issued by the Board, recommended that Carmen Lopez purchase skin care
15 products to take home, as well as skin peels and a Nano Laser. When asked about the
16 CoolSculpting procedure, Merzlak told Carmen Lopez that she had also been performing the
17 procedure for approximately three years.

18 14. Carmen Lopez returned to the front office and completed a medical history form at
19 the direction of a receptionist, but only after receiving the skin care consultation from Rebecca
20 Merzlak. Carmen Lopez purchased the Respondent's prescription strength version of Obagi,
21 called "Brighten," and was given a prescription for several other skin care products. The
22 prescription was not signed by Respondent. Rather, the prescription was signed by "Rebecca,
23 M.D." Meanwhile, Melissa Lopez paid for six laser hair removal sessions. Both Melissa Lopez
24 and Carmen Lopez left the Z Center for Cosmetic Health without ever receiving a medical

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26
27 ³ Melasma is a patchy brown, tan, or blue-gray facial skin discoloration thought to be related to
28 external sun exposure or hormonal changes. Treatment of this condition ordinarily requires diagnosis by a
Dermatologist and the use of hydroquinone creams.

1 consultation from Respondent or from any other licensed physician and surgeon, physician
2 assistant, or nurse practitioner.

3 February 2017 Undercover Operation

4 15. At approximately 10:00 a.m. on February 25, 2017, Melissa Lopez and Carmen Lopez
5 returned to the Z Center for Cosmetic Health. They were accompanied by several other
6 investigators and law enforcement officers from related agencies. Upon arrival at the clinic,
7 Carmen Lopez asked Lyndi Loomis for more prescription strength skin care medication. Carmen
8 Lopez asked Loomis if she needed to see Respondent for the prescription medication, but Loomis
9 replied "no, you can just get it." In fact, Loomis proceeded to make recommendations to Carmen
10 Lopez regarding the use of medication and possibly switching to other medications. Carmen
11 Lopez elected to purchase the same medication (Brighten) that she had previously purchased
12 during her first visit to the clinic. At no point did Carmen Lopez ever receive a medical
13 consultation from Respondent or from any other licensed physician and surgeon, physician
14 assistant, or nurse practitioner.

15 16. Meanwhile, Melissa Lopez was escorted to an examination room where she met the
16 registered nurse, Amanda Farrar, who does not have a medical license issued by the Board. Farrar
17 asked Melissa Lopez about her medical history including her use of medications and antibiotics.
18 She also provided Melissa Lopez with after care instructions. At the conclusion of this
19 conversation, Farrar turned on the laser machine, wiped Melissa Lopez's upper lip, handed her
20 glasses to prevent laser light exposure, and instructed Melissa Lopez to lay back in her chair.
21 After taking a picture of Melissa Lopez's upper lip, Farrar picked up the laser machine handle to
22 start the laser hair removal process. However, Melissa Lopez asked to use the restroom and
23 exited the examination room.

24 17. The undercover operation at the Z Center for Cosmetic Health terminated at
25 approximately 10:30 a.m. on February 25, 2017. Respondent was arrested for aiding and abetting
26 the unlicensed practice of medicine. After being advised of his *Miranda* rights, Respondent
27 invoked his right to remain silent without the presence of his attorney. All questioning ceased and
28 Respondent was taken into custody.

1 18. Investigators with Operation Safe Medicine arrested Rebecca Merzlak for engaging in
2 the unlicensed practice of medicine. During her interview, Merzlak stated that she had worked
3 for Respondent for approximately two years. She told the investigators that she conducts
4 CoolSculpting consultations with patients at no charge, whereas patients can have a consultation
5 with Respondent for \$200.00. Merzlak admitted that she also performs CoolSculpting
6 procedures. Moreover, Merzlak told the investigators that she often consults with patients
7 seeking Respondent's prescription strength version of Obagi, known as Brighten, and she
8 recommends the product to the patient. If Respondent agrees with the recommendation, then
9 Merzlak will sell the Brighten to the patient at the Z Center for Cosmetic Health. However,
10 Respondent usually does not see the patient. In fact, Merzlak told the investigators that
11 Respondent trained her on how to use the skin care products and what to recommend to patients.
12 However, Merzlak is an esthetician and is not permitted by law to diagnose and treat medical
13 conditions. She is also not permitted to write prescriptions and to sell prescription medications.

14 19. Investigators with Operation Safe Medicine also arrested Amanda Farrar for engaging
15 in the unlicensed practice of medicine. During her interview, Farrar told the investigators that she
16 started working at the Z Center for Cosmetic Health in October 2016. She is the only registered
17 nurse working at the clinic. According to Farrar, Respondent trained her how to use the laser hair
18 removal machine. She also told the investigators that Respondent does not visit with the laser
19 hair removal patients unless they specifically request to see him. Consequently, Respondent
20 ordinarily does not consult with these patients. Farrar confirmed that she conducts the medical
21 history and evaluation of the patient in order to determine if the patient is a good candidate for
22 laser hair removal. She stated that Respondent also trained her to conduct medical evaluations of
23 patients to determine if laser hair removal is an appropriate treatment procedure for the patient.
24 Although Farrar is permitted to perform laser hair removal as a registered nurse, she is not
25 permitted by law to perform the procedure unless the patient is seen and evaluated by a physician,
26 nurse practitioner, or physician assistant.

27 20. Additionally, investigators with Operation Safe Medicine arrested Siranush
28 Mkrtchyan for engaging in the unlicensed practice of medicine. During her interview, Mkrtchyan

1 told the investigators that she has worked at the Z Center for Cosmetic Health since February
2 2013. Mkrtchyan explained that she is a cosmetic treatment specialist and performs
3 CoolSculpting procedures. Mkrtchyan described how she sees patients seeking CoolSculpting
4 and performs an evaluation of the patient to determine if they are a good candidate for the
5 procedure. Mkrtchyan also told the investigators that she conducts CoolSculpting consultations
6 with patients at no charge, whereas patients can have a consultation with Respondent for \$200.00.
7 She stated that Respondent visits with some, but not all of the CoolSculpting patients at the
8 clinic. Mkrtchyan reported that she merely did what she was told by Respondent because she
9 assumed that Respondent would not instruct her to do something illegal. However, Mkrtchyan is
10 not permitted by law to diagnose patients and recommend the CoolSculpting procedure.

11 21. Finally, investigators with Operation Safe Medicine arrested Lyndi Loomis for
12 engaging in the unlicensed practice of medicine. During her interview, Loomis told the
13 investigators that she has been working at the Z Center for Cosmetic Health for approximately
14 three or four years. She is a client service coordinator responsible for contacting patients and
15 scheduling treatment procedures. According to Loomis, all laser hair removal patients are seen by
16 Amanda Farrar and Respondent does not perform a medical evaluation for these patients. .
17 Siranush Mkrtchyan and Rebecca Merzlak, as well as Respondent, perform the CoolSculpting
18 procedure upon interested patients. According to Loomis, patients have an option to pay \$200.00
19 to be evaluated by Respondent prior to the CoolSculpting procedure. Lyndi Loomis told the
20 investigators that Respondent authorized and directed all of the clinic staff to sell products to
21 patients, including prescription strength skin care products. She also told the investigators that
22 patients do not have to see Respondent in order to buy the prescription skin care products at the
23 front counter. However, Loomis is not permitted by law to recommend and sell prescription
24 medications.

25 Criminal Case in Los Angeles County Superior Court

26 22. On March 29, 2017, in the case entitled *The People of the State of California v.*
27 *Michael Aurash Zadeh*, case number LA085556, in the Superior Court of California, County of
28 Los Angeles, Respondent pled nolo contendere to the charge of aiding and abetting the unlicensed

1 practice of medicine in violation of Section 2052, subdivision (b) of Business and Professions
2 Code, a misdemeanor. Respondent was ordered to complete forty (40) hours of community
3 service and to pay \$7,650.00 in investigative costs to the Medical Board of California. In the
4 meantime, the Superior Court's entry of judgment and Respondent's sentencing were deferred
5 until 8:30 a.m. on March 29, 2018.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Aiding and Abetting the Unlicensed Practice of Medicine)**

8 23. By reason of the facts set forth in paragraphs 10 through 22 above, Respondent is
9 subject to disciplinary action under Section 2052, subdivision (b) of the Code, in that Respondent
10 aided or abetted unlicensed persons to engage in the practice of medicine or any other mode of
11 treating the sick or afflicted, which requires a license to practice.

12 24. Respondent's acts and/or omissions as set forth in paragraphs 10 through 22 above,
13 whether proven individually, jointly, or in any combination thereof, constitutes aiding or abetting
14 unlicensed persons to engage in the practice of medicine or any other mode of treating the sick or
15 afflicted, which requires a license to practice, pursuant to Section 2052, subdivision (b) of the
16 Code.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct)**

19 25. By reason of the facts set forth in paragraph 10 through 22 above, Respondent is
20 subject to disciplinary action under Section 2234, subdivision (a), and Section 2264 of the Code
21 in that Respondent has engaged in unprofessional conduct by aiding or abetting unlicensed
22 persons to engage in the practice of medicine or any other mode of treating the sick or afflicted,
23 which requires a license to practice.

24 26. Respondent's acts and/or omissions as set forth in paragraphs 10 through 22 above,
25 whether proven individually, jointly, or in any combination thereof, constitute Respondent's
26 unprofessional conduct based upon his aiding or abetting unlicensed persons to engage in the
27 practice of medicine or any other mode of treating the sick or afflicted, which requires a license to
28 practice, pursuant to Section 2234, subdivision (a), and Section 2264 of the Code.

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Medical Board of California issue a decision:

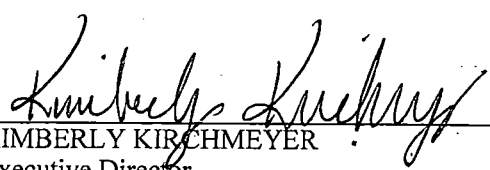
4 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 99098
5 issued to Michael Aurash Zadeh, M.D.;

6 2. Revoking, suspending or denying approval of his authority to supervise physician
7 assistants pursuant to section 3527 of the Code, and advanced practice nurses;

8 3. If placed on probation, ordering Michael Aurash Zadeh, M.D. to pay the Board the
9 costs of probation monitoring; and

10 4. Taking such other and further action as deemed necessary and proper.

11
12 DATED: September 28, 2017


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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